

DEPARTMENT OF STATE REVENUE

03-20191219R.ODR

**Final Order Denying Refund: 03-20191219R
Withholding Tax
For Tax Periods 2016 and 2017**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Company's claim for refund of withholding tax was unsubstantiated and thus was properly denied.

ISSUE

I. Indiana Withholding Tax - Claim for Refund.

Authority: IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2011); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2011).

Taxpayer seeks a refund of withholding tax paid.

STATEMENT OF FACTS

Taxpayer is a service company based outside of Indiana. In March of 2019, Taxpayer filed an Indiana Claim for Refund for withholding tax collected by the Indiana Department of Revenue's ("Department") collection agency for the tax period ending May 31, 2017. The Department denied Taxpayer's claim and Taxpayer filed a timely protest, opting to waive an administrative hearing. Therefore, this Final Order Denying Refund results from the information Taxpayer provided in the protest. Additional facts will be provided as necessary.

I. Individual Income Tax - Claim for Refund.

DISCUSSION

The Department issued proposed assessments and demand notices for unpaid withholding tax for August 2016 through May of 2017. Those notices went unpaid and the Department's collection agency collected the assessed amounts from Taxpayer. Taxpayer filed a claim requesting refunds of withholding tax remitted for the tax period ending May 31, 2017. According to the claim, the requested refund related to payments made between April 25, 2017 and December 1, 2017. Further, Taxpayer stated that while the Department's collection agency levied a total of \$5,595, it only had one employee living in Indiana with a withholding of approximately \$640. The Department denied Taxpayer's claim because no overpayment existed for May 2017. Taxpayer protested stating that during 2016 and 2017, they "only ever had [one] employee in the state of Indiana." Taxpayer requested a refund of the \$5,595 collected less the withholding related to that Indiana employee. Along with its protest, Taxpayer provided copies of its employee's 2018 W-2s, 2018 W-2 worksheets, and 2018 W-3.

All tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2011); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2011).

The Department assessed Taxpayer withholding tax for August 2016 through May of 2017. Taxpayer failed to respond to those notices, thus the Department's collection agency collected those amounts from Taxpayer on the Department's behalf. Taxpayer now requests a refund of those amounts as it only had one employee living in

Indiana during the months at issue. To support its argument, Taxpayer provided information relating to its 2018 payroll. Proof that Taxpayer had only one Indiana employee in 2018 is not proof that Taxpayer had only one Indiana employee in 2016 and 2017. Further, it is not proof that the amounts were actually levied by the Department's collection agency. It is the responsibility of the taxpayer to prove that the Department's assessments are incorrect. Taxpayer has not met its burden under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

December 12, 2019

Posted: 02/26/2020 by Legislative Services Agency
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